



**UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/238,950	01/27/99	BREDA	W 189334

LEYDIG VOIT & MAYER
TWO PRUDENTIAL PLAZA
SUITE 4900
CHICAGO IL 60601-6780

PM92/1203

EXAMINER

HEISEY, D

ART UNIT	PAPER NUMBER
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3632

DATE MAILED:

12/03/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/238,950

Applicant(s)
Wayne J. Breda et al.

Examiner
David Heisey

Group Art Unit
3632



☒ Responsive to communication(s) filed on Oct 28, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

☒ Claim(s) 1-23 is/are pending in the applicat

Of the above, claim(s) 6-13 and 23 is/are withdrawn from consideration

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-5 and 14-22 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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DETAILED ACTION

This is the first Office Action for serial number 09/238,950, Intravenous Equipment Hangers, filed on January 27, 1999. The Application contains 23 claims numbered 1-23.

Election/Restriction

Applicant's election with traverse of Species III in Paper No. 6 is acknowledged. The traversal is on the ground(s) that: (1) Claims 6 and 23 are generic; and (2) There is no serious burden on the Examiner. Claims 6 and 23 are not generic. Examiner has indicated three distinct Species: Species I employs a mounting member defining a downwardly open pocket for mounting to a partition; Species II uses mounting member which is a plate member with openings for mounting on a wall; and Species III defines a mounting member defining a mounting pocket which is open upward. Examiner maintains that Claim 6 is distinct from Species I and III because it requires a plate member with openings for mounting on a wall. In addition, Examiner maintains that Claim 23 is distinct from Species II and III because it requires removable attachment to a partition.

There would be a serious burden on the Examiner if forced to examine all three species. Examiner agrees with Applicant that some classes and subclasses may overlap. However, Examiner maintains that many subclasses to be searched do not overlap. And even if, assuming arguendo, no additional subclasses would have to be searched, Examiner would still have to look

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for three distinct embodiments which would significantly slow down the search process. Furthermore, many subclasses contain literally thousands of patents which can take hours to flip through. Thus, a prima facie case under Applicant's interpretation of MPEP 803 has been established. However, establishing this burden was not necessary. If patentably different species are disclosed in the application, "... it is not necessary to show a separate status in the art or separate classification." (See MPEP 808.01(a)). While there is a policy of compact prosecution, the plain language of the rules set forth that an examiner may require an election of species between patentably different species (see MPEP 808.01(a); 37 CFR 1.146).

With respect to Examiner's inclusion of the "reservation of citing the same prior art" clause, Examiner responds that this disclaimer is standard and is in no way indicative of an overlap in regards to the aforementioned distinct species. In summary, the requirement is still deemed proper and is therefore made FINAL.

Claims 6-13 and 23 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected species, the requirement having been traversed in Paper No. 6.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 17 recites the limitation "said mounting pocket" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 14, 15 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent #3,048,360 to Foley. Foley discloses an intravenous infusion equipment hanger assembly including a mounting member (22, 32 & 42) defining a generally vertical first plane (defined by 22 and 32) and including a plate 32; a detachably mounted hanger (26, 30, 31 & 80) having an elongate pole (26 & 80) with multiple telescopically engaged sections (26 & 80) and

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engagement elements 31; an offset support 24 having a flange leg 64; wherein the pole (26 & 80) is spaced from said mounting member (22, 32 & 42).

Claims 1, 2, 5 and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent #4,547,092 to Vetter et al. Vetter discloses an intravenous infusion equipment hanger assembly including a mounting member 13 defining a generally vertical first plane and including a plate (13, back wall); a hanger 26 having in the form of an elongate pole 26; an L-shaped offset support (11 & 12) having a first leg (11 & 12) and a downwardly extending flange leg/distal leg (37, lower flange) with openings (at 35); wherein the pole 26 is spaced from said mounting member 13; said mounting member 13 defining a mounting pocket (38, lower slot) for receiving said flange leg (37 lower flange); said mounting pocket (38, lower slot) being open upward.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vetter.

With respect to claims 18-20, Vetter teaches all elements except a *plurality* of offset supports. It would have been obvious to one of ordinary skill in the art at the time the invention was made to

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have included a *plurality* of offset supports in order to provide support for additional elongate poles. Alternatively, claims 18-20 are rejected because mere duplication of parts has no patentable significance unless unexpected results are produced (see MPEP 2144.04(VI)(B)).

With respect to claim 21, Vetter as applied to claim 18, teaches all elements except a *plurality* of mounting pockets. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included a *plurality* of mounting pockets in order to provide support for additional elongate poles. Alternatively, claim 21 is rejected because mere duplication of parts has no patentable significance unless unexpected results are produced (see MPEP 2144.04(VI)(B)).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

3,337,880 to Florek
4,879,798 to Petre
5,174,533 to Pryor et al.
5,358,205 to Starkey et al.
5,829,723 to Brunner et al.

Florek, Petre, Pryor et al., Starkey et al. and Brunner et al. teach intravenous infusion equipment hanger assemblies including a mounting members and hangers.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to David Heisey, whose telephone number is 703.306.3233. The Examiner can


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normally be reached on Tuesday through Friday from 8:30 A.M. to 5:00 P.M. The fax machine telephone number for the Technology Center is 703.305.3597 or 703.305.3598.

Any inquiry of a general nature or relating to the status of this Application should be directed to the Technology Center receptionist at 703.308.2168. The fax machine telephone number for Art Unit 3632 is 703.308.3519.

DH

David Heisey
Patent Examiner
Technology Center 3600
Art Unit 3632
11-25-99


ANITA M. KING
PATENT EXAMINER
ART UNIT 3632